MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

James D. Crum
Coots, Henke & Wheeler, P.C.
Carmel, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Robert Charles Sisk,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 13, 2022

Court of Appeals Case No. 22A-CR-619

Appeal from the Hamilton Superior Court

The Honorable Michael A. Casati, Judge

Trial Court Cause No. 29D01-2107-F4-3923

Robb, Judge.

Case Summary and Issues

[1] Following a jury trial, Robert Sisk was found guilty of stalking, a Level 4 felony; stalking, a Level 5 felony; intimidation, a Level 6 felony; domestic battery, a Class A misdemeanor; and criminal mischief, a Class B misdemeanor. Sisk received an aggregate sentence of thirteen years in the Indiana Department of Correction. Sisk appeals his convictions, raising two issues for our review: 1) whether the trial court abused its discretion in admitting evidence of prior bad acts at trial; and 2) whether there was sufficient evidence to prove Sisk used a deadly weapon in committing stalking as a Level 4 felony. Concluding the trial court did not abuse its discretion in admitting evidence and there was sufficient evidence to support Sisk's conviction of Level 4 felony stalking, we affirm.

Facts and Procedural History

[2] Sisk and Shari Blickman began a romantic relationship in March 2021. They did not live together, although Sisk had left some of his belongings at Blickman's house, which was just down the street from his own. By the last week of June, however, the relationship had become volatile and was marked by arguments, physical altercations, and threats.

[3] On June 25, Blickman and Sisk argued in person at a local pub they frequented and continued to argue via text message after Sisk left. Later that night, Sisk showed up at Blickman's house uninvited, pounded on the back door, and

demanded that Blickman let him in. Blickman testified she cracked the back door and then Sisk "reached in and grabbed me by the hair and pulled me out[.] . . . [He] threw me down on my porch and hit me and continued to drag me around by my hair" while yelling that he was going to "beat the f*ck out of me or that the cops were going to come and kill him, or take him away." Transcript of Evidence, Volume 2 at 89-90. Blickman took Sisk's threats seriously because she knows him and "genuinely thought he was trying to do suicide by cop[.]" *Id.* at 92. Blickman was "scared and hurt" and "begg[ed] him to please stop[.]" *Id.* at 89. Eventually, Sisk "started to get more emotional [and] went to crying and blaming [Blickman] for his actions[.]" *Id.* at 92. After he left, Blickman was "scared, really hurt that he did these things[, and e]mbarrassed." *Id.* at 94.

[4] Throughout the day on June 26, Sisk threatened Blickman via text message, particularly about a phone he had given her and things he had left at her house. That evening, while Blickman had friends over to her house, Sisk texted her, "[G]ive me my sh*t or I'll show my a**" and "[Y]ou got 30 minutes to get my sh*t together out side [sic] your fence or I am going to tech [sic] you a lesson[.]" Exhibits, Volume 4 at 122. Sisk briefly stopped by Blickman's house, but one of Blickman's friends spoke to him and he left. Blickman was "[p]anicked" when he showed up, and after he left, she made arrangements for her son's father to pick him up because she was "really believing [Sisk] wants to kill [her] or [her] friends." Tr., Vol. 2 at 116. Despite advice to call the police, Blickman was reluctant to do so because she did not want to be responsible for sending Sisk to

prison or to suffer the consequences from him if police did not arrest him. Blickman and her friends decided to go to the pub "where there's [cameras] and people around . . . in case he came in and shot and killed [her]." *Id.* at 117.

[5] Around 10 o'clock, Sisk began texting Blickman and encouraging her to go the pub. *See* Ex., Vol. 4 at 142 (text message from Sisk stating, "Come on go to Pub I want to show what I am made of"). Approximately an hour later, Sisk texted Blickman that he was "[h]eaded that way now it's my turn[,]" followed by a picture of him holding a gun in his lap. *Id.* at 143-44. Several minutes later, Sisk texted, "You will know what you created . . . The Devil[,]" followed by another picture of him holding the gun. *Id.* at 145-47. Blickman was feeling "scared and intimidated" because Sisk had told her he had shot and killed someone before. Tr., Vol. 2 at 106; *see id*. at 110-11, 229. Despite receiving the pictures of a gun, Blickman had "not physically seen [Sisk] with a gun." *Id.* at 188. Nonetheless, she "believe[d] that was his hand holding that gun that he sent . . . directly from his phone to [her] phone." *Id.* at 215.

[6] Sisk did go to the pub, but Blickman hid and did not encounter him that night. Instead, her best friend, Stephanie Neese, intercepted Sisk. Neese had seen some of the text messages between Sisk and Blickman, and she was "anxious and nervous" when Sisk walked into the pub. *Id.* at 245. Neese confronted Sisk, but the bartender, Robert Clark, intervened. Sisk shifted his shirt and Neese saw a gun in his waistband that she believed was the same gun displayed in the pictures Sisk had texted Blickman. *See id*. at 248-49. Clark also saw the gun. *See* Tr., Vol. 3 at 24-25. Clark walked Sisk out of the pub without

incident. Neese returned to Blickman's house with her and saw Sisk drive by at least once.

[7] On June 27, Blickman was feeling disappointed in herself, angry at Sisk, and confused because she still cared for Sisk despite his behavior. Sisk reached out via text to apologize, and they again engaged in a day-long communication. When Sisk asked Blickman to meet him for lunch on June 29, she agreed to meet him but first solicited a promise from him "to never put his hands on [her] again or threaten [her] with a pistol or scare [her and her] friends." Tr., Vol. 2 at 134. As they continued to converse over the course of the next few days, Sisk repeatedly apologized to Blickman and asked for her forgiveness and another chance to be together.

[8] On July 2, they got together at Blickman's house to discuss what it "would look like if [they] were [to] start to try to be something again." *Id.* at 140. But Blickman had plans with friends that evening and they began to argue as she got ready to leave. While Blickman was with her friends, Sisk began to text Blickman and make demands upon her, asking for some of his things back and stating, "Don't worry, I will come back for you after this. Believe that." *Id.* at 143. Shortly after Blickman arrived home, Sisk arrived and began pounding on the back door and yelling to be let in so he could retrieve his things. When Blickman did not answer, Sisk broke the door and entered the house, eventually finding Blickman hiding in the bathroom. Sisk was wearing gloves which frightened Blickman and she asked Sisk if he was going to kill her. Sisk replied, "I'm not going to hurt you unless you don't get me my f*cking sh*t. Get out,

get me my sh*t." *Id.* at 147. Blickman got out of the bathtub and, naked, gathered Sisk's items. He left the house without further incident.

[9] The following day, July 3, Blickman's friends, including Neese, spent most of the day at her house to fix the broken door and "just stay with [her], keep [her] safe." *Id.* at 153. Neese described Blickman as a "hollow, numb, scared shell of a person" that day. Tr., Vol. 3 at 5. That night, Sisk drove past Blickman's house several times, parked in a parking lot across the street, and texted Blickman to ask if she was ready to meet her maker. Having Sisk parked across the street made Blickman uncomfortable, "like he was just waiting and watching for everybody to leave so he could come kill [her]." Tr., Vol. 2 at 155. Blickman's friends convinced her to call the police, who arrived within a matter of minutes and ultimately arrested Sisk. Officers did not find a weapon on Sisk's person or in his truck.

[10] The State charged Sisk with stalking as a Level 4 felony for allegedly being armed with a deadly weapon during the commission of the crime, which was alleged to have occurred from June 25 to July 3; stalking as a Level 5 felony; intimidation; domestic battery for the June 25 incident; and criminal mischief for the July 2 incident. The State also filed a notice of intention to offer Indiana Evidence Rule 404(b) evidence of, among other things, Sisk telling Blickman that he "had been directly involved in the shooting and killing of a human being." Appellant's Appendix, Volume 2 at 92.

[11] Prior to selecting a jury, the parties and the trial court discussed the State's 404(b) notice. Sisk objected to the State's proposed evidence as "way too prejudicial." Tr., Vol. 2 at 13. The trial court agreed it was prejudicial, but also agreed with the State's explanation that the evidence was relevant and probative "just to show the relationship between [Blickman] and [Sisk], . . . the way he knew that she knew these things about him or saw him in this way, because . . . that changes the way all of these events unfolded." *Id*. The trial court indicated it would allow the evidence as admissible under 404(b), and during the trial, Blickman testified over objection as described above. *See supra* ¶ 4. Sisk's motion in limine precluded any other information about his criminal history from being presented to the jury. The jury found Sisk guilty of all counts and he now appeals his convictions.

Discussion and Decision

I. Admission of Evidence

A. Standard of Review

[12] Trial courts have broad discretion in ruling on the admissibility of evidence and we will disturb an evidentiary ruling only where it is shown the trial court abused that discretion. *Attkisson v. State*, 190 N.E.3d 447, 451 (Ind. Ct. App. 2022). An abuse of discretion occurs when a trial court's decision to admit or exclude evidence is clearly against the logic and effect of the facts and circumstances before it. *Turner v. State*, 953 N.E.2d 1039, 1045 (Ind. 2011).

B. Rule 404(b) Evidence

[13] Sisk argues the trial court abused its discretion in allowing Blickman to testify that he had told her he previously shot and killed someone. Specifically, he argues the trial court failed to balance the probative value of this evidence against the fact that other, less inflammatory evidence had already been introduced to show the reasonableness of Blickman's fear.

[14] The trial court made a pre-trial ruling on the State's 404(b) notice that although the evidence was prejudicial, "the nature of the charges are such that it is very relevant evidence." Tr., Vol. 2 at 13. Pursuant to that ruling, the State questioned Blickman at trial as follows:

> Q: And in that second text when [Sisk] says "I want to show you what I'm made of," how did you interpret that?
>
> A: That he wanted to show me what he was capable of.
>
> Q: And can you describe what you mean by that?
>
> A: Things that he shared with me in the past that I'm aware of, so basically telling me, to me I hear him saying I'm not afraid to do those things again.
>
> Q: What were those things?
>
> A: Like hurt somebody.
>
> * * *

Q: Specifically what did he say he did?

A: Took somebody's life.

Id. at 109-10.

[15] Sisk objected and moved to strike. During a sidebar, Sisk's counsel explained, "It's not pertinent to these proceedings and it unfairly prejudices my client. It is not probative." *Id.* at 110. The trial court disagreed, stating, "I think it is very probative. They have to prove that she's in fear, being terrorized." *Id.* Sisk's counsel asserted the "probative value is much less than the prejudicial effect to my client" and moved for a mistrial. *Id.* The trial court overruled the objection and denied the motions to strike and for mistrial. The State asked one final question along these lines: "When he told you he killed someone, did you believe him?" and Blickman answered, "Yes." *Id.* at 111. The State also returned to this line of questioning on redirect, asking Blickman if Sisk had told her how he had killed someone, and Blickman responded, over objection, "He shot him[.]" *Id.* at 229.

[16] Indiana Evidence Rule 404(b) provides:

> (1) *Prohibited Uses*. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> (2) *Permitted Uses*[.] This evidence may be admissible for another purpose, such as proving motive, opportunity, intent,

> preparation, plan, knowledge, identity, absence of mistake, or lack of accident. . . .

In assessing the admissibility of Rule 404(b) evidence, the trial court must first determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act; and if it is, then the trial court must balance the probative value of the evidence against its prejudicial effect pursuant to Rule 403. *Boone v. State*, 728 N.E.2d 135, 137-38 (Ind. 2000). The evidence is inadmissible when the State offers it only to produce the "forbidden inference" that the defendant's "prior wrongful conduct suggests present guilt." *Fairbanks v. State*, 119 N.E.3d 564, 568 (Ind. 2019), *cert. denied*, 140 S.Ct. 198 (2019). The trial court has wide discretion in weighing the probative value of the evidence against the possible prejudice of its admission. *Crain v. State*, 736 N.E.2d 1223, 1235 (Ind. 2000). If the evidence has some purpose besides showing behavior in conformity with a character trait and the balancing test is favorable, the trial court can elect to admit the evidence. *Boone*, 728 N.E.2d at 138.

[17] A defendant's prior bad acts are usually admissible to show the relationship between the defendant and the victim. *Ross v. State*, 676 N.E.2d 339, 346 (Ind. 1996). In the present case, the evidence in question illuminated the relationship between Sisk and Blickman. Further, Sisk was charged with stalking Blickman and making an implicit or explicit threat to murder her with the intent to place her in reasonable fear of death. *See* Appellant's App., Vol. 2 at 15; *see also* Ind. Code § 35-45-10-5(a), (b)(1). The 404(b) evidence therefore was relevant to an

element of the crime: Sisk sending Blickman photos of himself holding a gun "actually cause[d] [Blickman] to feel terrorized, frightened, intimidated, or threatened" because she believed he had shot someone before, Ind. Code § 35-45-10-1 (defining "stalking"), and therefore his threats placed her in reasonable fear of death. The evidence was not simply character evidence introduced to raise the forbidden inference. *See Boone*, 728 N.E.2d at 138.

[18] As for the Rule 403 balancing, the trial court clearly recognized the danger of unfair prejudice. *See* Tr., Vol. 2 at 13, 110. And as Sisk says, there was other evidence that showed why Blickman was in fear of Sisk; for instance, her testimony about the June 25 incident when he pulled her out of her house by her hair, struck her, and threatened to beat her. *See supra* ¶ 3. However, no other evidence demonstrated why Blickman was specifically fearful of being shot and killed by Sisk. Moreover, the evidence was not presented as proof that Sisk *had* killed someone before, only as evidence that Blickman *believed* he had and therefore gave credence to his threats against her. The trial court considered the danger of prejudice when making its pretrial ruling and again in the context of the trial and the evidence that had been presented to that point and determined the probative value of the evidence outweighed any such prejudice. We decline to find an abuse of discretion in the trial court's admission of this evidence.

II. Sufficiency of the Evidence

A. Standard of Review

[19] When reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor judge witness credibility. *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). We consider only the evidence supporting the verdict and any reasonable inferences drawn from that evidence. *Id.* "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (citation omitted).

B. Evidence of a Deadly Weapon

[20] Sisk challenges the sufficiency of evidence supporting only his conviction of stalking as a Level 4 felony, and specifically challenges only the evidence that he was armed with a deadly weapon while committing that crime. He contends the State failed to prove he was armed with a deadly weapon during the incidents of stalking because the only evidence supporting that element was texts with pictures of a gun and Neese and Clark's testimony that they saw him with a gun shortly after he sent those texts; Blickman never saw him with a gun, a gun was not recovered, and the State did not prove the gun displayed in the texts or at the pub was capable of causing serious bodily injury.

[21] To prove a weapon was used in the commission of a crime, it is not necessary to introduce the weapon into evidence at trial, but there must be some proof that the defendant was actually armed with a deadly weapon at the time of the crime. *Gray v. State*, 903 N.E.2d 940, 943 (Ind. 2009). The defendant's statement or implication that he had a weapon is itself evidence that he was armed. *Id.* at 945 (affirming conviction for armed robbery where, although no one testified to seeing a gun, defendant communicated that he was armed).

[22] Sisk implied that he had a deadly weapon when he sent pictures to Blickman of himself holding a gun accompanied by threatening words.[1] The pictures caused Blickman to be afraid because of the events of the previous day and the day-long barrage of texts from Sisk making demands, threatening her and her friends, calling himself the Devil, and telling her he wanted to show her what he was capable of. That Neese and Clark later saw Sisk with a gun both validated Blickman's fear and demonstrated a reasonable person would feel threatened. *See* Ind. Code § 35-45-10-1 (defining stalking as "a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel . . . and that actually causes

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[1] "[T]here are two categories of 'deadly weapons:' (1) firearms; and (2) weapons capable of causing serious bodily injury." *Merriweather v. State*, 778 N.E.2d 449, 457 (Ind. Ct. App. 2002). Neese and Clark both testified that Sisk displayed a gun at the pub. Because a gun is a statutorily defined deadly weapon, there is no need to analyze whether the alleged weapon had the actual ability to inflict serious injury through use of the object. *See Gorman v. State*, 968 N.E.2d 845, 850-51 (Ind. Ct. App. 2012) (affirming conviction for armed robbery over defendant's objection that because the gun he allegedly used was never recovered, there was insufficient evidence that what he possessed was "an actual, functioning firearm . . ., as opposed to possibly a toy"; victims' testimony that defendant possessed a handgun was sufficient to prove he was armed with a deadly weapon).

the victim to feel terrorized, frightened, intimidated, or threatened."). But importantly, stalking is a crime that can be accomplished without face-to-face contact. *See Eisert v. State*, 102 N.E.3d 330, 334 (Ind. Ct. App. 2018) ("Invasion of privacy and stalking are crimes that can be accomplished by telephone calls, emails, letters, or rung doorbells."), *trans. denied*. Therefore, this case is unlike the armed robbery cases that Sisk cites that discuss use of a weapon during a crime which can only be accomplished in person. *See* Appellant's Brief at 9-10 (citing *Rogers v. State*, 537 N.E.2d 481, 485 (Ind. 1989)); Ind. Code § 35-42-5-1 (defining robbery in part as knowingly or intentionally taking property "from another person or from the presence of another person"). That Blickman did not "experience the 'realism'" of seeing or feeling the gun in person does not in this case diminish the fear she felt because of Sisk's threatening behavior which is the gravamen of the offense. Appellant's Br. at 10 (referring to *Rogers*, 537 N.E.2d at 485).

[23] There is evidence that Sisk was armed with a gun during an incident of harassing Blickman and that Sisk's repeated harassment of her caused Blickman to feel frightened. There is sufficient evidence to support Sisk's conviction of stalking while armed with a deadly weapon.

Conclusion

[24] The trial court did not abuse its discretion in admitting evidence of a prior bad act by Sisk and Sisk's Level 4 felony stalking conviction is supported by sufficient evidence. Accordingly, Sisk's convictions are affirmed.

[25] Affirmed.

Pyle, J., and Weissmann, J., concur.